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**\*\* BOARD CERTIFIED SPECIALIST IN  
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December 6, 2016

**VIA U.S. MAIL and EMAIL TO:[skane@southernshores-nc.gov](mailto:skane@southernshores-nc.gov)**

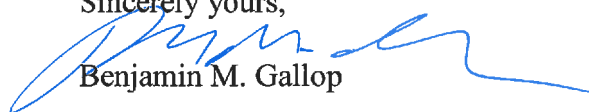
Town of Southern Shores Board of Adjustment  
C/O Sheila Kane, Clerk to the Board of Adjustment  
5375 N. Virginia Dare Trail,  
Southern Shores, NC 27949

Re: Filing of Motion to Dismiss and Request for Hearing  
In Re: Appeal of Akers Family, LLC (APA-16-02)

Dear Sheila,

Please find enclosed and/or attached a Motion to Dismiss for Lack of Subject Matter Jurisdiction and Request for Hearing in the above referenced Board of Adjustment appeal. Please file this motion and provide copies to the Board of Adjustment along with the agenda packet.

Sincerely yours,



Benjamin M. Gallop

BMG/

cc: E. Crouse Gray, Jr., Attorney for Petition/Applicant (via email and U.S. Mail)  
Wes Haskett, Zoning Administrator (via email)  
Jay Wheless, Attorney for Board of Adjustment (via email)

NORTH CAROLINA

BEFORE THE BOARD OF ADJUSTMENT

TOWN OF SOUTHERN SHORES

Application No. APA-16-02

IN RE: APPEAL OF AKERS  
FAMILY, LLC

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:  
:  
:

**MOTION TO DISMISS FOR  
LACK OF SUBJECT MATTER JURISDICTION  
AND REQUEST FOR HEARING**

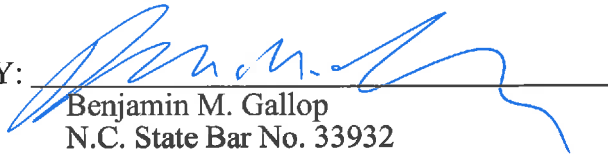
NOW COMES Respondent, Town of Southern Shores (the "Town"), and moves that the Southern Shores Board of Adjustment dismiss the Petitioner/Applicant's appeal for lack of subject matter jurisdiction to hear the appeal. In support of said motion and prayer, the Town provides that under North Carolina law, the Board of Adjustment lacks subject matter jurisdiction to hear the Applicant's appeal because there has been no decision made for which there is a right of appeal and if such a right of appeal exists, the Petitioner/Applicant failed to timely appeal.

The Town requests that this motion be heard by the Board of Adjustment at the Board's regularly scheduled December 19, 2016 meeting prior to or contemporaneously with the scheduled hearing on the Petitioner/Applicant's appeal application.

This 6<sup>th</sup> day of December, 2016.

HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.

BY:



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*Attorneys for Town of Southern Shores*

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the pleading or paper to which this Certificate of Service is attached as indicated below, upon the below-named person(s):

- ( ) By delivering a copy personally.
- ( ) By leaving a copy at the office of such person.
- ( ) By telecopying said papers as indicated below.
- (X) By electronic mail.
- (X) By depositing into a post office or official depository under the exclusive care and custody of the United States Postal Service a copy within a post-paid wrapper addressed as shown below.

**Served On:**

E. Crouse Gray, Jr.  
3120 N. Croatan Hwy., Ste. 101  
Kill Devil Hills, NC 27948  
Email: crouseg@grayandlloyd.com  
Fax: 252.441.8414  
*Attorney for Applicant*

This the 6th day of December, 2016.

  
\_\_\_\_\_  
Of Counsel for Town of Southern Shores